

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**
Civil Action No. 1:17-CV-1154

P & L DEVELOPMENT OF NEW)	
YORK CORPORATION and P & L)	
DEVELOPMENT LLC,)	
)	
Plaintiffs,)	
)	
v.)	
)	
BIONPHARMA INC. AND)	
BIONPHARMA HEALTHCARE)	
LLC,)	
)	
)	
Defendants.)	
-----)	

**NOTICE OF REMOVAL OF DEFENDANTS BIONPHARMA INC. AND
BIONPHARMA HEALTHCARE LLC**

Pursuant to 28 U.S.C. §§ 1332(a), 1441, and 1446, Defendants Bionpharma Inc. and Bionpharma Healthcare LLC (collectively, “Bion”) hereby file this Notice of Removal and thereby remove this action from the Superior Court of Guilford County, North Carolina, to the United States District Court for the Middle District of North Carolina. Removal is proper because this Court has diversity jurisdiction under 28 U.S.C. § 1332(a). In support of this Notice of Removal, Bion states as follows:

I. THE STATE COURT ACTION

1. On December 13, 2017, P & L Development of New York Corporation and P & L Development LLC (collectively, “PLD”) served Bion with a Civil Summons (the “Summons”) and an Application and Order Extending Time to File Complaint (the

“Application”). A copy of the Summons and Application is attached hereto as Exhibit A. The Application and Summons was filed in the General Court of Justice, Superior Court Division, Guilford County, North Carolina, and was assigned case number 17 CVS 9516 (the “Civil Action”).

2. On December 22, 2017, P & L Development LLC (but not P & L Development of New York Corporation) filed in the Civil Action a Verified Complaint against Bion. The certificate of service on the Verified Complaint indicates it was sent to Bion via UPS Overnight mail on December 22, 2017. A copy of the Verified Complaint is attached hereto as Exhibit B.

3. The Verified Complaint asserts four causes of action against Bion for alleged breaches of four agreements, one cause of action for alleged breach of the covenant of good faith and fair dealing, another cause of action for alleged violations of N.C. Gen. Stat. § 75-1.1, and a final cause of action for preliminary and permanent injunctive relief. It further alleges damages in “in excess of \$5,000,000.00.” Ex. B (Verified Complaint) ¶ 89.

II. VENUE

4. Venue is proper because the Middle District of North Carolina embraces Guilford County, North Carolina, where this action is pending. *See* 28 U.S.C. §§ 113(b), 1441(a).

III. SUBJECT MATTER JURISDICTION

5. Diversity jurisdiction pursuant to 28 U.S.C. § 1332(a) exists.

6. Both the Verified Complaint and Application claim damages in excess of \$75,000. Ex. A, p. 3 (Application) (claiming “millions of dollars” in damages); Ex. B (Verified Complaint) ¶ 89 (alleging that damages are “in excess of \$5,000,000.00”). Thus, the amount in controversy requirement is met.

7. There is also complete diversity of citizenship between the parties.

8. For federal diversity jurisdiction purposes, a corporation is a citizen of the states in which it has been incorporated and in which it has its principal place of business. *Cent. W. Virginia Energy Co. v. Mountain State Carbon, LLC*, 636 F.3d 101, 102 (4th Cir. 2011). The citizenship of a limited liability company is determined by the citizenship of its members. *Id.* at 104.

9. Defendant Bionpharma Inc. is a Delaware corporation with its principal place of business in New Jersey. *See* Exhibit C (Delaware Secretary of State Record); Exhibit D (New Jersey Department of Revenue Record). Accordingly, it is a citizen of Delaware and New Jersey.

10. Defendant Bionpharma Healthcare LLC is a limited liability company organized under the laws of Delaware. Its sole member is Defendant Bionpharma Inc. Thus, it is also a citizen of Delaware and New Jersey.

11. Plaintiff P & L Development LLC is a limited liability company organized under the laws of Delaware. Ex. B (Verified Complaint) ¶ 1. Upon information and belief, it is a citizen of New York, based on the citizenship of its membership. *See* Ex. E (Certificate of Merger) at 3 (listing P & L Holding Enterprises Corp. as “Sole Member”);

Jones v. PL Developments, LLC, No. 15-cv-05713, ECF No. 7 (C.D. Cal. July 28, 2015) (federal court filing made by P & L Development, LLC certifying that the sole member of P & L Development, LLC is P & L Development Holdings, LLC, and further that the sole member of P & L Development Holdings, LLC is P & L Holding Enterprises Corp.) (attached as Ex. F); Ex. G (New York Department of State record for P & L Holding Enterprises Corp, reflecting that it is a New York corporation with its office in New York).

12. P & L Development of New York Corporation was a New York corporation with its principal place of business in New York. Upon information and belief, it is no longer an active corporation. Ex. G (New York Department of State record for P & L Development of New York Corporation).

13. Bion has timely filed this Notice of Removal, and all defendants—Bionpharma Inc. and Bionpharma Healthcare LLC—consent to removal.

14. In compliance with 28 U.S.C. § 1446(a), the Summons and Application that were served on Bion in the Civil Action are attached as Exhibit A, and the Verified Complaint is attached as Exhibit B. A copy of this Notice of Removal is being served on PLD's counsel and is being filed simultaneously with the Clerk of the General Court of Justice, Superior Court Division, County of Guilford. By filing this Notice of Removal, Bion does not waive any defenses that may be available to it, and expressly reserves all such defenses. If any questions as to the propriety of removal arise, Bion invokes its right to present additional evidence and briefing to demonstrate that this case has been

properly removed. Pursuant to 28 U.S.C. § 1446(a), Bion has attached the Application, Exhibit A, and Verified Complaint, Exhibit B. Bion also is attaching as Exhibit H a Notice of Designation, Motion to File Documents Under Seal, and Subpoena.

This the 28th day of December, 2017

/s/ Jon Berkelhammer

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*Attorneys for Defendants Bionpharma Inc.
and Bionpharma Healthcare LLC.*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 28, 2017, the foregoing Notice of Removal, along with all exhibits thereto, was served via electronic mail, Federal Express, and by facsimile at the number indicated below to the following counsel of record:

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